

## IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction ORIGINAL SIDE

DHANSAR ENGINEERING CO. PVT. LTD. AND ANR.

VS WEST BENGAL MINERAL DEVELOPMENT AND TRADING CORP. LTD. AND ORS.

BEFORE: The Hon'ble JUSTICE ANIRUDDHA ROY

Date: 4th January, 2023.

ORDER SHEET

WPO/1818/2022

Appearance: Mr. Jishnu Saha, Sr. Adv. Mr. Dwaipayan Basu Mallick, Adv. Mrs. Amrita Panda, Adv. Mr. Arka Prava Sen, Adv. Mr. Subhankar Das, Adv. ..for the petitioners

Mr. Samrat Sen, Sr. Adv. Mr. Sanjay Saha, Adv. .... for the respondents

The Court: Despite direction, the respondents chose not to file affidavit.

Mr. Sanjay Saha, learned advocate appearing for all the respondents, on instruction, submitted that his clients shall proceed in the matter on the basis of the writ petition itself without using any affidavit-in-opposition thereto.

Arising out of a tender floated by the respondent no.1 for appointment of Mine Developer and Operator, the first petitioner became a successful tenderer and was an aspirant to participate in the said tender issued on September 16, 2020.

Under the terms of the said tender, the first petitioner was supposed to furnish several information and particulars to carry out the tendered work. Such particulars were furnished. Upon Upon scrutiny, the respondent no.1 found those particulars which were furnished by the first petitioner were alleged to be misleading and full of false statements which were, according to the first respondent, in fundamental violation of the tender terms to which the parties agreed upon. As a result, the respondent no.1 on August 13, 2021, Annexure- P- 1 to the writ petition, issued a notice to show cause as to why the bid security should not be forfeited in terms of Clause 9.1.7 ( c) of the

Request for Proposal (RfP) for submission of affidavit with false/misleading statement while submitting bid for selection of Mine Developer and Operator in respect of Gourandih ABC Coal Mines. The first petitioner in terms of the said show-cause replied thereto by its letter dated August 17, 2021 at page 26 to the writ petition.

After receiving the said reply to the show-cause from the first petitioner, the first respondent by its letter dated September 10/13, 2021, Annexure- P- 2 to the writ petition, issued an order of debarment in terms of Clause 9.7 of RfP for submission of affidavit with false/misleading statement, while submitting bid for selection of Mine Developer and Operator in respect of Gourandih ABC Coal Mines. The said communication also mentioned that after careful consideration of the facts and circumstances, the first respondent had decided to debar the first petitioner from participating in any further/future tender of the first respondent for a period of five years from the date of issuance of that order.

The said order of debarment dated September 10/13, 2021 at page 27, Annexure- P- 2 to the writ petition along with the said show-cause notice dated August 13, 2021 Annexure- P- 1 to the writ petition were impugned in the instant writ petition.

Mr. Jishnu Saha, learned senior counsel appearing for the petitioners, referring to the said show-cause notice submitted that while issuing the same, the first respondent invoked Clause 9.1.7 ( c ) of the RfP which did not provide for any provision for debarment of the petitioner in participating in any tender of the first respondent for five years or otherwise. Whereas in terms of the said show-cause notice when the impugned decision of the first respondent was taken on September 10/13, 2021, Annexure- P- 2 to the writ petition, the first respondent invoked another provision of the RfP, i.e., Clause 9.7 of the RfP and debarred the first petitioner in the manner stated therein. Mr. Saha submitted that when the show cause notice was issued by invoking one particular provision of the RfP, the result thereof or the decision thereupon should have been and must be restricted to that provision only under which the show-cause notice was issued and not in any other manner. Mr. Saha then submitted that nowhere in the said show cause notice, it was mentioned that the first respondent would take a decision for debarment of the first petitioner. Mr. Saha then placed reliance on the penultimate paragraph of the

said impugned decision of the first respondent dated September 10/13, 2021, wherefrom it appeared that, though the first petitioner was threatened for forfeiture of its bid security furnished by the first petitioner by way of a bank guarantee, the same was returned in its entirety to the first petitioner.

He then submitted that the ground in the show-cause notice could not survive any further the moment the bid security was returned.

Mr. Saha submitted that the effect of debarment as imposed upon the petitioners from participating in any further tender process for five years would amount to " black-listing " which could not have been done without granting an opportunity of hearing to the first petitioner and as such, the said decision of debarment is also in violation of basic principle of natural justice.

On this score, Mr. Saha submitted that both the said impugned decisions dated September 10/13, 2021 Annexure- P- 2 to the writ petition and the said show-cause notice dated August 13, 2021 are liable to be set aside.

Mr. Sanjay Saha, learned Advocate appearing for the respondents referring to Clause 9.7 (at page 153 to the writ petition) of the RfP submitted that provision has already been there for debarment in the same circumstance where the petitioners, according to the first respondent, disclosed false information and particulars. Therefore, he submitted that the said decision of the first respondent dated September 10/13, 2021, Annexure- P- 2 to the writ petition was in sync with the Clause 9.7 of the RfP.

Learned counsel for the respondents further submitted that since the petitioners had admitted the allegations levelled against them by the respondent NO. 1, the question of granting any opportunity of personal hearing did not arise.

Considering the rival submissions of the parties and considering the materials on record, it appears that before issuing the said order of debarment and the decision thereunder as mentioned in the impugned communication dated September 10/13, 2021, Annexure- P- 2 to the writ petition, no opportunity of hearing was afforded to the first petitioner. It also appears to this Court that, the bid security had already been returned by the first respondent to the first petitioner which was a ground in the show-cause notice dated August 13, 2021 to proceed against the first petitioner. From the show-cause notice it is also

clear that there was no provision made known to the petitioners that the first petitioner would be debarred from participating in any further tender for five years to be floated by the first respondent.

From all these facts stated above, this Court is of the firm view that the show-cause notice dated August 13, 2021 was issued for the purpose of forfeiture of the bid security in terms of Clause 9.1.7 (c) of RfP whereas the decision was taken for debarment of the petitioners dated September 10/13, 2021, Annexure- P- 2 to the writ petition, which was not there at all in the ground for show cause in the show-cause notice. So, the petitioners did not get any opportunity to deal with the said ground for debarment of the first petitioner under the said show cause.

Inasmuch as it is trite that the nature of debarment the petitioners had suffered under the said impugned decision dated September 10/13, 2021, would amount to nothing but " black-listing " of the first petitioner which could not be done without affording an opportunity of hearing to the petitioners

In absence of affording an opportunity of hearing to the petitioners while debarring it in the manner as mentioned in the said impugned decision dated September 10/13, 2021, the first respondent acted in clear breach of the elementary proposition of natural justice.

Inasmuch as the moment the bid security was returned to the first petitioner by the first respondent, the ground in the said show-cause notice dated August 13, 2021 diminished and was no more available to the first respondent to proceed against the first petitioner under he said show cause notice. Hence, the first respondent could not have taken any step under the said show-cause notice or could proceed with it any further.

In view of the foregoing discussions and reasons, the said show-cause notice dated August 13, 2021, Annexure- P- 1 to the writ petition and the impugned decision dated September 10/13, 2021, Annexure- P- 2 to the writ petition, both stand set aside and quashed. Consequently, any steps and further steps taken by the first respondent under the said show-cause notice and/or the said impugned decision dated September 10/13, 2021 against the first petitioner stand set aside and quashed.

It is, however, made clear that this Court has not gone into the merits of the allegations made by the respondent no.1 against the first petitioner in any manner and this order shall not preclude the first respondent to proceed against the first petitioner strictly in accordance with law.

On the above terms, this writ petition, WPO/1818/2022, stands allowed without any order as to costs.

**(ANIRUDDHA ROY, J.)**